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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	) 2:20-cr-00225-CKD
	)
Plaintiff,	) STIPULATION AND [PROPOSED]
	) ORDER TO CONTINUE STATUS
v.	) CONFERENCE AND EXCLUDE TIME
	) UNDER THE SPEEDY TRIAL ACT
JESSICA L. CUMMINGS,	)
	)
	)
Defendant.	) DATE: March 25, 2021
	) TIME: 9:30 a.m.
	) JUDGE: Hon. Carolyn K. Delaney
	)

This case was previously set for a status conference on March 25, 2021. On March 22, 2021, defense counsel emailed counsel for the government requesting a continuance and exclusion of time under the Speedy Trial Act.

On March 17, 2020, this Court issued General Order 611, which suspended all jury trials in the Eastern District of California scheduled to commence before May 1, 2020. This General Order was entered to address public health concerns related to COVID-19. On May 13, 2020, this Court issued General Order 618, which extended the suspension of all jury trials until further notice.

1 Although the General Orders address the district-wide health  
2 concern, the Supreme Court has emphasized that the Speedy Trial Act's  
3 end-of-justice provision "counteract[s] substantive open-endedness  
4 with procedural strictness," "demand[ing] on-the-record findings" in a  
5 particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006).  
6 "[W]ithout on-the-record findings, there can be no exclusion under" §  
7 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be  
8 harmless. *Id.* at 509; see also *United States v. Ramirez-Cortez*, 213  
9 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an  
10 ends-of-justice continuance must set forth explicit findings on the  
11 record "either orally or in writing").

12 Based on the plain text of the Speedy Trial Act—which *Zedner*  
13 emphasizes as both mandatory and inexcusable—General Orders 611, 612,  
14 617, and 618 and the subsequent declaration of judicial emergency  
15 require specific supplementation. Ends-of-justice continuances are  
16 excludable only if "the judge granted such continuance on the basis of  
17 his findings that the ends of justice served by taking such action  
18 outweigh the best interest of the public and the defendant in a speedy  
19 trial." 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is  
20 excludable unless "the court sets forth, in the record of the case,  
21 either orally or in writing, its reason or finding that the ends of  
22 justice served by the granting of such continuance outweigh the best  
23 interests of the public and the defendant in a speedy trial." *Id.*

24 The General Orders and declaration of judicial emergency exclude  
25 delay in the "ends of justice." 18 U.S.C. § 3161(h)(7) (Local Code  
26 T4). Although the Speedy Trial Act does not directly address  
27 continuances stemming from pandemics, natural disasters, or other  
28 emergencies, this Court has discretion to order a continuance in such

1 circumstances. For example, the Ninth Circuit affirmed a two-week  
 2 ends-of-justice continuance following the Mt. St. Helens' eruption.  
 3 *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 4 recognized that the eruption made it impossible for the trial to  
 5 proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F.  
 6 Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time  
 7 following the September 11, 2001 terrorist attacks and the resultant  
 8 public emergency). The coronavirus is posing a similar, albeit more  
 9 enduring, barrier to the prompt proceedings mandated by the statutory  
 10 rules.

11 In light of the societal context created by the foregoing, this  
 12 Court should consider the following case-specific facts in finding  
 13 excludable delay appropriate in this particular case under the ends-  
 14 of-justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup>

#### 15 **STIPULATION**

16 The United States of America, by and through its counsel of  
 17 record, and defendant, by and through its counsel of record,  
 18 stipulate as follows:

19 1. By previous order, this matter was scheduled for a status  
 20 conference on March 25, 2021 at 9:30 a.m.

21 2. Defendant is set to begin a 120-day term of imprisonment on  
 22 April 8, 2021, in Eldorado County.

23 3. Since the initial appearance, the defendant has indicated  
 24 a desire to set her case for a jury trial.

25 4. By this stipulation, the parties now jointly move to  
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27  
 28 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make "additional findings to support the exclusion" at the judge's discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

1 continue the status conference to September 9, 2021 at 9:30 a.m., and  
2 to exclude time between March 25, 2021, and September 9, 2021, under  
3 Local Code T4.

4 4. The parties agree and stipulate, and request that the Court  
5 find the following:

6 a) The government has represented that the discovery  
7 associated with this case includes investigative reports and related  
8 documents in electronic form. This discovery has been either  
9 produced directly to counsel and/or made available for inspection and  
10 copying.

11 b) The government has represented that the drug analysis  
12 report is forthcoming.

13 c) Counsel for defendant desires additional time as  
14 defendant will be incarcerated for a period of 120 days beginning  
15 April 8, 2021, and as such needs additional time to prepare this case  
16 for trial, including reviewing discovery, interviewing witnesses, and  
17 meeting with the client.

18 d) Counsel for both parties believe that failure to grant  
19 the above-requested continuance would deny them the reasonable time  
20 necessary for effective preparation, taking into account the exercise  
21 of due diligence.

22 e) In addition to the public health concerns cited by  
23 General Order 611 and presented by the evolving COVID-19 pandemic, an  
24 ends-of-justice delay is particularly apt in this case because  
25 Counsel or other relevant individuals have been encouraged to  
26 telework and minimize personal contact to the greatest extent  
27 possible.

28 f) Based on the above-stated findings, the ends of justice

1 served by continuing the case as requested outweigh the interest of  
2 the public and the defendant in a trial within the original date  
3 prescribed by the Speedy Trial Act.

4 g) For the purpose of computing time under the Speedy Trial  
5 Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the  
6 time period of March 25, 2021 to September 9, 2021, inclusive, is  
7 deemed excludable pursuant to 18 U.S.C. § 3161(h) (7) (A), (B) (iv)  
8 [reasonable time to prepare] because it results from a continuance  
9 granted by the Court at defendant's request on the basis of the  
10 Court's finding that the ends of justice served by taking such action  
11 outweigh the best interest of the public and the defendant in a  
12 speedy trial.

13 4. Nothing in this stipulation and order shall preclude a  
14 finding that other provisions of the Speedy Trial Act dictate that  
15 additional time periods are excludable from the period within which a  
16 trial must commence.

17 IT IS SO STIPULATED.

18  
19 DATED: March 22, 2021

PHILLIP A. TALBERT  
Acting United States Attorney

20  
21 By: /s/ Alstyn Bennett  
22 ALSTYN BENNETT  
Assistant U.S. Attorney

23  
24 /s/ Linda Allison  
25 LINDA ALLISON  
Assistant Federal Defender  
26 Counsel for Defendant  
27 (Per 03/22/2022 email authorization from  
28 Linda Allison)

**[PROPOSED] FINDINGS AND ORDER**

IT IS SO ORDERED, that the status conference is continued to September 9, 2021 at 9:30 a.m.

The Court has considered all of the factors listed above and specifically finds that the ends of justice outweigh the best interests of the public and the defendant in a speedy trial. The Court orders that time under the Speedy Trial Act shall be excluded from March 25, 2021, to September 9, 2021, under Local Code T4.

FOUND AND ORDERED.

Dated: March 23, 2021



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE